Historic houses are often looking for new ways to generate income, support the maintenance of the estate and provide revenue for the owners. The leisure sector is now back on track following the recession. There are many activities such as weddings, event hire and catering which will provide a steady income stream for the estate.

You will recall we hosted a seminar specifically on ‘Wedding Hire’ for the Next Generation HHA Members back in April. The event highlighted the legal issues to consider in that scenario, and we wanted to follow up with a short article on the legal aspects property owners will need to consider when launching a café, restaurant or other form of catering concession on their premises.

**In house or outsourced**
The first decision which needs to be made is whether to run the café, restaurant or other concession (e.g. temporary pop-ups) in house, or to outsource to a specialist catering firm. Typically, we find the latter approach is more common as it avoids the need to hire staff directly and allows venues to tap into the expertise, resources and buying power of the caterer. Normally, in the outsourced scenario, the caterer is granted a right to operate the café or restaurant (and possibly any event catering) for a particular period in return for a concession fee based on sales – with built-in minimum payments.

The remainder of this article considers the key areas which property owners will need to consider carefully when entering into this kind of concession arrangement.

**Duration**
Typically catering concession agreements run from anywhere between 3-10 years (with 3-5 years being the most common term), with rights for either party to terminate early if the other breaches the contract or becomes insolvent. The longer the duration of the agreement, the more careful the property owner must be to ensure that the terms of the agreement protect its position on the points raised below.

**Protecting ‘profit’**
Property owners will not want to be locked in to a long-term unprofitable arrangement. Typically the caterer meets all of its own costs and the owner should receive a percentage commission based on ‘Net Sales’ (which should be defined as all revenue received by the concessionaire, less VAT). Concession rates normally range between 10-20% of Net Sales. These commission arrangements should also be supplemented by a bare-minimum monthly commission arrangement, below which the commission paid will not fall.

**Capital investment**
Where the caterer is investing in the catering areas (e.g. fitting out a kitchen, café or restaurant) the terms of such investment should be confirmed in the agreement. Standard practice is the capital expenditure is as set in the agreement and depreciated on a straight-line basis over the term of the agreement. If the agreement is terminated early, the venue owner is normally obliged to repay the outstanding (undepreciated) balance.

**Being clear on exclusivity**
If the venue owner wishes to retain rights to offer food and beverage itself (or to work with other catering contractors), this should be made clear in the agreement. Disputes around exclusivity are fairly common where agreements are not clear on this point.

**Preserving the quality of the catering offering**
Catering concession agreements normally include a service description/service levels which describe the catering offering and set quality levels. This is important as poor-quality catering reflects badly on the property as a whole.

**Mitigating risk of damage to property or personal injury**
The catering agreement should include provisions under which the caterer ‘indemnifies’ (agrees to protect and reimburse) the property owner for any damage to the property or injury to any customers. This should be underpinned by an obligation on the caterer to take out and maintain suitable public and product liability insurance of a minimum value (e.g. £5-£10 million).

**Staffing issues**
The catering agreement should provide various standard form protections for the venue owner in relation to possible employment-related claims by the caterer’s staff, including upon termination or expiry of the agreement.

**Property aspects**
Property owners need to be careful not to inadvertently grant the caterer a lease over the premises. Normally the arrangements are framed as a simple licence for the caterer to occupy. Use of the words ‘lease’ and ‘rent’ should be avoided, unless the granting of a lease is consciously intended. Rights to require the caterer remove problematic staff members can also be useful.

**Conclusion**
Appointing a specialist caterer to operate a café, restaurant or other outlet can generate a valuable profit stream for venue owners, but care must be taken on the (sometimes quite complex) legal issues to ensure that such profit, and the property and its owners more generally, are not put at risk.

---

MORE INFORMATION
David Copping is a commercial law specialist who has advised numerous historic houses, national museums and galleries on their café and restaurant agreements. David can be contacted by email (david.copping@farrer.co.uk) or by telephone (020 3375 7485).